

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**DAVID ABDULLA HOLIDAY,**

**Plaintiff**

**v.**

**J. SAGE, *et al.*,**

**Defendants**

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**CIVIL NO. 1:15-1507**

**(Judge Rambo)**

**(Magistrate Judge Carlson)**

**MEMORANDUM**

Before the court is an August 4, 2015, report and recommendation of the magistrate judge (Doc. 4) to whom this matter was referred in which he recommends that Plaintiff David Abdulla Holiday's complaint be dismissed for failing to comply with the pleading standards set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, \_\_\_\_\_ U.S. \_\_\_\_\_, 129 S. Ct. 1937 (2009); and Rule 8(a) of the Federal Rules of Civil Procedure. The magistrate judge recommended that Holiday's action be dismissed without prejudice to file an amended complaint. The magistrate judge further ordered that the Clerk of Court provide a copy of Holiday's complaint to the United States Attorney's Office in order for that office to alert appropriate correctional officials of Holiday's concerns. (Doc. 4 at p. 12.)

Subsequent to the filing of the report and recommendation, the Clerk of Court sent to Holiday a 30-day administrative order advising him that he must pay the filing fee or file the appropriate application to proceed *in forma pauperis*. (Doc. 5.) Holiday filed a response to that administrative order (Doc. 6.) in which he returned all forms sent with that order and stated that he does not want to file a civil law suit but wants criminal charges filed against prison officials. (*Id.*)

The magistrate judge addressed the request for a criminal indictment in his report and recommendation and rightfully opined that the filing of criminal

charges are the prerogative of the Executive Branch of the United States government. (Doc. 4 at p. 9.) *See also, United v. Nixon*, 418 U.S. 683, 693 (1974).

In light of Holiday's clear assertion that his filing is not intended to state a civil rights action, the report and recommendation will be adopted in part and rejected in part. An appropriate order will be issued.

s/Sylvia H. Rambo  
United States District Judge

Dated: August 19, 2015.